IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No.390 of 1992

Date of decision : September 11, 2007

State of H.P. **…Appellant.**

Versus

Ram Kishan and another **…Respondents.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting? No.

For the appellant : Mr. Som Dutt Vasudeva, Additional Advocate General, with Mr. D.S. Nainta, Deputy Advocate General.

For the Respondents : Mr. Vinay Thakur, Advocate

Surjit Singh, Judge (Oral)

Respondents Ram Kishan and Ram Swarup were sent up for trial for offences punishable under Sections 302 and 201 read with Section 34 of the Indian Penal Code for allegedly murdering Bimla Devi, wife of respondent No.2, on the night intervening 30th and 31st May, 1991 and throwing the dead body into a Nullah in a forest. Respondent No.1 is a brother of respondent No.2.

2. First, the prosecution version may be summed up. Deceased Bimla Devi was married to respondent No.2 Ram Swarup several years prior to her death. On 30th May, 1991, PW-2 Bhagwanti Devi allegedly took the deceased to her *Obra* (cattle shed) and enquired about the rumor which she had heard in the village about her (deceased's) illicit relationship with her (PW-2) husband. Respondent No.1 overheard PW-2 Bhagwanti Devi making enquiries with the deceased in the *Obra*

Whether reporters of the local papers may be allowed to see the judgment?

regarding the rumor of her illicit relationship with the husband of PW-2 Bhagwanti Devi. Respondent No.1 apprised his brother respondent No.2, the husband of the deceased, about what he overheard. The two worked out a plan to get rid of the deceased because of her leading an unchaste life. That very night they allegedly took the deceased to the fields and there they strangulated her to death. The dead body was then carried in a *Kilta* (basket) to a nearby Nullah and thrown into the running water of that Nullah. On 1st June, 1991, respondent No.2 informed the father of the deceased, namely PW-10 Shri Ishwari Dutt that the deceased had left his house on 31st May, 1991 around 6 in the morning for the forest to fetch fodder and had not returned. PW-10 Ishwari Dutt, the father of the deceased, told respondent No.2 to search for his wife himself. The next day, i.e. 2nd June, 1991, respondent No.2 lodged a report with the police that the deceased had gone to the forest, but had not returned and that she had been missing. On 4th June, 1991, the dead body of the deceased was found floating in the Nullah. It was retrieved. Postmortem was conducted on 6th June, 1991 and the Dr. J.P Sharma (PW-1), who conducted the postmortem, opined that the cause of death was strangulation. Police registered a case under Sections 302 and 201 read with Section 34 I.P.C. against the respondents. During the course of investigation, PW-3 Jagat Ram and PW-5 Hari Nand made statements that they had seen the deceased and respondent No.1 pulling each other at their house around 9 or 9-30 p.m. on 30th May, 1991. Respondents were taken into custody. Respondent No.1 made a statement to the police leading to the recovery of a *Kilta* (basket) in which the dead body was allegedly carried from the site of the murder to the Nullah. The *Kilta* had a piece of *Dupatta* of the deceased stuck inside it.

3. Trial Court has acquitted the respondents holding that the evidence on record does not prove the charge.

4. We have heard the learned Additional Advocate General. The two masons, who allegedly saw the deceased and respondent No.1 grappling and pulling each other on the night of 30th May, 1991 around 9/9.30 p.m., did not support the prosecution version. They were cross-examined by the prosecution with the leave of the Court. However, they did not say anything in favour of the prosecution even in the course of their cross-examination by the learned Public Prosecutor.

5. Recovery of *Kilta,* even if it be assumed to have been proved, in no case connects the respondents with the commission of the crime they are charged with, because there is no evidence on record indicating that the dead body was carried in the *Kilta* from the site of the killing to the Nullah and that too by the present respondents. *Kilta* was recovered from the *Obra* of the respondents, which was an open place. PW-4 Shanti Swarup, in whose presence the *Kilta* was allegedly recovered, has denied that any piece of *Dupatta* was found stuck to the *Kilta* inside it. No other evidence was adduced by the prosecution.

6. Looking to the above discussed position, we do not think the trial Court has committed any illegality in acquitting the respondents or that its finding that the respondents are not proved to have committed the crime, is perverse. The appeal is, therefore, dismissed.

(Surjit Singh), J

September 11, 2007 (ss) **(Surinder Singh), J.**